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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,814	10/22/2001	Takeshi Miyao	1743/189	2996

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EXAMINER	
CHAVIS, JOHN Q	

ART UNIT	PAPER NUMBER
2124	13

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/914,814	Applicant(s) MIYAO ET AL.	
	Examiner John Chavis	Art Unit 2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. 8/15/03
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: ____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/189,181. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference between the current application and '181 is the format of the claims. For example, both claim in claim 1 an operating system for managing a plurality of operating systems and both are now managed in a time-sharing manner '189 enable recording; while the present application has a unit for recording; '189 replaces alternately in a time-sharing manner; while this feature is inherent in the present application's switching; both requires a common computing unit in the body of '189 and in the preamble of the present application; '189 finds correspondence; while the present application searches for a reference (correspondence); and both finds a sequence of operation information.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Loucks (5,764,984).

Claims	Loucks
1. An operating system management method for managing a plurality of operating systems, the plurality of operating systems being replaced alternately and operated in a time-sharing manner, with all of said plurality of operating systems being operated as software of a common computing unit, comprising:	See the title and abstract. Note also col. 5 lines 17-32, which indicates resource contention problems will exist and therefore timesharing inherently occurs. Also, see col. 3 lines 56-64.
a recording unit for recording operation information transferred from an operation information memory for storing an operation state of each of said operation information, obtained through a synchronization operation operating the plurality of operating systems at the same time during a time-shared switching operation thereof, and being assumed as a reference to other operation	See col. 2 lines 28-51. In reference to the "same time" feature, again see the portions cited above and note the wait function for the subdominant personality in fig. 3, which provides for synchronization and switching between information items.

information items corresponding to each other and regarded to have been generated approximately at the same time;	
a searching unit for searching operation information assumed as a reference to said other operating information items from said operation information items recorded in said operation information memories of said operating systems;	See col. 2 lines 66-67 and col. 5 lines 37-45. See also col. 3 lines 1-3, which inherently indicates that time is shared. Note again the portions cited above, which clearly indicates that information items must be recorded when a resource is not available (for example, for a subdominant system) and utilized to enable synchronizations after a wait time expires to ensure that both systems have access to available resources.
wherein said management system finds a sequence of other operation information items recorded in said operation information memories of said operating systems according to the correspondence to said searched operation information.	See col. 1 lines 56-67, col. 4 lines 7-27, fig. 3. and col. 3 line 65-col. 4 line 6.

As per claims 2-3, see the rejection of claim 1 above.

The features of claim 4 are inherent in claim 1 above to enable concurrent operations between the two operating systems.

In reference to claim 5, see the kernel features taught by Loucks, col. 5 lines 18-32.

As per claim 6, see the rejection of claim 1 in view of claim 4, as this is the essence of the dominant operating system (with built in control program) to control

procedures and resolve issues between systems. Note also that time management is inherently performed via a counter function and that either system can be the dominant system and the features are provided for handling errors (logging), col. 4 line 58-col. 5 line 16.

The features of claims 7-8 are inherent in the task manager feature of Windows systems, see col. 5 lines 46-56.

In reference to claim 9, see the rejection of claims 4 and 6 above.

Claim 10 is taught via the feature of having one operating system dominant (i.e. control program), col. 2 lines 52-62, and having the dominant system selectable, col. 2 lines 28-35. Also, see col. 3 lines 56-64.

As per claims 11-12 and 14, these features are considered inherent to ensure coordination of resources via the dominant system, col. 4 line 58-col. 5 line 16.

The features of claim 13 are considered inherent to enable one of the systems to be dominant.

In reference to claim 15, time management is inherently based on counters; for example, see the wait function in fig. 3.

Claim 17 is taught by Loucks dominant personality system controlling access to resources and providing synchronization between systems, col. 2 lines 44-65.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

> invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loucks as applied to claim 1 above, and further in view of the application's design choice of location of resources or functionalities. The applicant merely shifted resources from one location to another, which is not taught or suggested by Loucks. However, the overall functionality remains the same and therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to separate functionality in Loucks system to simplify the maintenance of each component; since, the overall functionality of the program remains the same.

Conclusion

7. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Q. Chavis whose telephone number is 703-305-9665. The examiner can normally be reached on 8:30 am-5:00 pm Est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on 703-305-9662. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-3900.

Jqc
May 6, 2004

JOHN CHAVIS
PATENT EXAMINER
ART UNIT 2124